IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 20 OF 2005.

Mr. John Salvador Pinto @
Joao Salvador Pinto,
resident of H. No. 130,
Morod Vaddo, Piedade, Diwar,
Ilhas, Goa. .... Appellant.

Versus

Agostinho Cruz Pinto,
Resident of H. No. 130,
Morod Vaddo, Piedade,
Diwar, Ilhas, Goa. .... Respondent.

Shri Valmiki Menezes, Advocate for the Appellant.

Shri N. K. Sawaikar, Advocate for the Respondent.

CORAM: A. P. LAVANDE, J.

DATE: 16th MARCH, 2006.

ORAL ORDER:

Heard Mr. Menezes, learned counsel for the appellant and Mr. Sawaikar, learned counsel for the respondent.

2. By this appeal, the appellant who is the Applicant in Inventory Proceedings No. 3/87/A pending before the Civil Judge, Senior Division at Panaji takes exception to the Order dated 8th December, 2004 passed in Inventory Proceedings No. 3/87/A. The appellant who was the applicant

before the trial Court filed an application seeking exclusion of Item No. 5 i.e. a room which was taken on lease in Block 'C' of Cardozo Building, situated at Ponte de Linhares, Panaji on the ground floor on the ground that the applicant had exclusive rights in the said property. This application was dismissed by the trial Court.

3. Mr. Menezes, the learned counsel, placing reliance on Article 1383 of the Portuguese Civil Procedure Code submitted that in terms of the said Article, the parties were entitled to lead evidence once such an issue was raised before the Court. Article 1383 reads as under :-

> " Where any co-heir or any other person, claims the ownership of the properties described and prays that the same be excluded from the description, the dispute shall be decided, after hearing the administrator or the person who described the properties, if different, and after evidence is led and necessary information is obtained. "

4. Mr. Sawaikar, learned counsel appearing for the respondent, does

not seriously dispute the submissions made on behalf of the appellant. A bare reading of Article 1383 discloses that when a co-heir claims exclusive ownership of the property and claims exclusion, the dispute has to be decided after hearing th Administrator and after permitting the parties to lead evidence. In the present case, admittedly the parties have not been permitted to lead evidence as required under Article 1383.

5. In view of the above, the impugned order cannot be sustained. Consequently the Order dated 8th December, 2004 passed in Inventory Proceedings No. 3/87/A is quashed and set aside. The trial Court is directed to hold inquiry by permitting the parties to lead evidence. Needless to mention that since the application was filed in the year 1999, the trial Court shall dispose of the application expeditiously after giving opportunity to the parties to lead evidence in terms of Article 1383.

6. The appeal stands disposed of in the aforesaid terms with no order as to costs.

A. P. LAVANDE, J.

sl.